APPENDIX.
Exhibit A.

Findings of Fact, Conclusions of Law and Judgment Entered by the District Court in This Case.

The Court having issued its Memorandum and Order in this proceeding on January 6, 1972, holding that the Government's request for an injunction is denied, because reclamation laws do not apply to water stored behind the Pine Flat Dam, and if they did, pay-out relieved defendant of the 160-acre limitation, now makes its findings of fact and conclusions of law, as follows:

Findings of Fact

1. This suit was brought by the United States for an injunction against defendant, Tulare Lake Canal Company, to restrain it from delivering water stored in Pine Flat Dam and Reservoir (herein referred to as Pine Flat Dam) to lands held by a single owner in excess of 160 acres. Defendant is a California water company which delivers to its stockholders, through canals and works owned by it, Kings River water appropriated under vested, nonappurtenant water rights for use in irrigation. The lands owned by defendant's stockholders and served by defendant are located within the Tulare Lake Basin, hereafter described. Defendant admits that it has delivered, and unless the law forbids will continue to deliver, water stored in Pine Flat Dam to its stockholders for the irrigation of lands in excess of 160 acres in single ownership. Defendant is one of 28 entities which have contracted with the United States for the exclusive and perpetual storage use of Pine Flat Dam for irrigation purposes, such contracts in the aggregate exhausting the entire capacity of Pine Flat Dam for the storage of water for irrigation purposes.

2. Intervenor defendants in the proceeding are Tulare Lake Basin Water Storage District and Salyer Land Com-

pany. The former is one of the 28 contracting entities referred to and the latter owns and operates for agricultural purposes lands in excess of 160 acres within the Tulare Lake Basin. A brief *amici curiae* was presented jointly in behalf of Alta Irrigation District, Fresno Irrigation District, Consolidated Irrigation District, Kings River Water District, Laguna Irrigation District (all Kings River contracting entities) and Kaweah Delta Water Conservation District, Lower Tule River Irrigation District and Tule River Association (entities interested through their participation in similar projects on the Kaweah and Tule Rivers).

3. Pine Flat Dam was constructed on the Kings River in California, about 25 miles easterly of the City of Fresno, and was completed in 1954. Pine Flat Dam was constructed and is, and always has been, operated by the Army Engineers pursuant to Section 10 of the Flood Control Act of 1944 (58 Stat. 891, 901). Pine Flat Dam, as determined by Congress, is primarily for flood control purposes but with important incidental irrigation uses. In 1963 the 28 Kings River entities entered into the contracts with the United States, previously referred to, by which they obtained for the first time a contractual right for the permanent use for irrigation storage purposes of Pine Flat Dam. In return, the 28 contracting entities paid, or agreed to pay, the cost of Pine Flat Dam allocated to irrigation uses, as determined by law, in the total amount of $14,250,000. Under these contracts, the 28 entities also agree to pay, and have paid, $750,000 to the United States for a conveyance, and the United States has conveyed to said entities as tenants in common, "for irrigation purposes and other beneficial agricultural uses free and clear of all encumbrances of every name and nature, any and all right, title, or interest [the United States] now has or claims to have in and to the water of Kings River," as set forth in Conveyance and Covenants

in Compromise and Settlement of Fresno Slough Claims, No. 14-06-200-699-A.

4. Defendant, as one of the 28 contracting entities, entered into Contract No. 14-06-200-691-A with the United States on December 23, 1963. Simultaneously with the execution of said contract, defendant paid to the United States the entire balance owed by it for such irrigation storage rights and for the conveyance of the United States' claims to Kings River water for irrigation uses, referred to in the preceding paragraph.

5. By its contract, including specifically Article 8(e) thereof, defendant assumed no obligation with regard to the delivery of stored water to lands held in excess of 160 acres in single ownership unless and to the extent that such obligation was required by the then-existing laws of the United States. It is the Government's contention in this proceeding that said laws apply general reclamation law, and specifically Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S.C. § 423e), to the irrigation use of Pine Flat Dam and do forbid the delivery of stored water to such so-called excess lands. It is defendant's contention, in which the intervenors and *amici curiae* join, that the laws of the United States contain no requirement that general reclamation law is applicable to the irrigation storage use of Pine Flat Dam. Further, it is defendant's contention, in which intervenors and *amici curiae* join, that even if the so-called acreage limitation of reclamation law did initially apply to the irrigation storage use of Pine Flat Dam, that limitation was extinguished as to defendant when, on December 23, 1963, it completed payment to the United States of its entire share of the capital cost of Pine Flat Dam. The United States, in turn, denies that such pay-out has this effect.

6. The case was tried in Fresno during the period extending from Tuesday, May 4, 1971, to Friday, May 14, 1971, both inclusive. Twelve witnesses testified in person in behalf of defendant, and two witnesses testified by deposition in behalf of defendant and intervenor Tulare Lake Basin Water Storage District. Various stipulations of fact were entered into by the parties and approved by the Court. No witnesses appeared for the United States. Over 700 documentary exhibits were received in evidence. Following extensive briefing by all parties and *amici curiae*, oral argument was held before the Court on September 2, 1971.

7. Prior to 1944, both the Army Engineers and the Bureau of Reclamation had made studies of the proposed Pine Flat Dam project and submitted them to the Congress. The Congress decided in favor of having the project built and operated by the Army Engineers, and Section 10 of the 1944 Act expressly referred to and adopted the report of the "Secretary of War and the Chief of Engineers," said report being referred to as House Document Numbered 630, Seventy-Eighth Congress, Third Session. The adoption of the report was subject to only one limitation, not pertinent here. No proposal for or mention of the application of reclamation law or acreage limitation to Pine Flat Dam was contained in this report adopted by Congress. Section 10 of the 1944 Act further expressly provided that payment for irrigation uses should be arranged for by the Secretary of War, payment to the United States to be made "either in lump sum or annual installments". The aforementioned repayment obligation of $14,250,000 was determined by the Secretary of War in accordance with the procedures of applicable law. Payment of this amount by the water users under their contracts will fully reimburse to the United States the capital costs of the project allocated in accordance with law to irrigation storage use.

8. The report of the Army Engineers informed the Congress that all of the waters of the Kings River available for irrigation purposes were fully appropriated by the water users; that they had developed approximately 850,000 acres in the Kings River service area with their own private funds; and that they had built and owned a complete system of canals and other works which were used for distribution of water diverted from Kings River for irrigation purposes. The Army Engineers expressed the view that the project was primarily for flood control, with incidental, although important, irrigation benefits, consisting of capacity for the storage of water to be used for irrigation. The Bureau of Reclamation's report to Congress recognized that no new lands would be developed by the construction and operation of the project, and the House Flood Control Committee Report found that irrigation benefits from the project "would accrue to land now already developed without bringing into production additional arid land".

9. In the Congressional hearings many Kings River water users testified, supporting the report of the Army Engineers in preference to that of the Bureau of Reclamation. Among the many facts developed, the testimony showed that about 200,000 acres at the southern limit of the Kings River service area, known as the Tulare Lake Basin, were subject to periods of extensive flood and to other periods of intensive drought; that well water was not available in important areas of the Basin for either irrigation or domestic uses; that the Basin contained practically no dwellings for residential purposes; that water conditions in the Basin were suitable for large-scale farming operations, but not for permanent farm homes; and that subdivision and settlement of the area would be hazardous and unwise. At the time of the June, 1943, hearings, it was pointed out to the Congress that 112,000 acres of the Tulare Lake Basin

were then flooded, to an average depth of 14.5 feet. Testimony by the Commissioner of Reclamation recognized "there is no water to be developed . . . our studies indicate that the complete normal run-off . . . [is] now under State law allocated to individuals and agencies in the region, and we cannot interfere with that".

10. The evidence at the trial supports the various factual statements set forth in the report of the Army Engineers, the report of the Bureau of Reclamation and in the testimony before the congressional committees, as and to the extent outlined in Paragraphs 8 and 9, above, and the Court hereby finds accordingly. These factors influenced the Congress in enacting the Flood Control Act of 1944 and thereby authorizing Pine Flat Dam as a flood control rather than a reclamation project. Further, the evidence at the trial compels the finding that the situation, above described, continues to exist at the present time. That is, the project is primarily a flood control project; the United States has conveyed to the water users any and all right, title or interest it had or claimed to have in and to the water of Kings River, as set forth above in Finding No. 3, and Pine Flat Dam has not developed any new or supplemental water supply which can be sold by the United States; all rights to the use of Kings River water for irrigation purposes and other beneficial agricultural uses are vested in the local water users; arid lands have not been reclaimed within the Kings River service area as the result of the construction and operation of Pine Flat Dam; the lands have been developed and the complete distribution system of canals and ditches are owned by the local water users; no canals, ditches or other distribution works have ever been built by the United States or with any federal assistance; and because of flooding, drought, soil conditions and inadequate domestic and irrigation water supplies, the 200,000 acres known as the Tulare

Lake Basin are not adaptable to actual settlement by family farmers in 160-acre or 320-acre parcels as contemplated by the federal reclamation laws. The evidence shows that even at the time of trial in May, 1971, some 27,000 acres of Tulare Lake Basin were yet under flood waters remaining from the massive inundation of 89,000 acres during the 1968-1969 run-off season and that, in addition to substantial crop loss and flood fighting expense, further substantial costs were yet to be incurred in bringing such land back into production. Earlier, in the 1966-67 run-off season, another substantial flood struck Tulare Lake Basin. Two other instances of flooding in Tulare Lake Basin have occurred since Pine Flat Dam was completed in 1954. The Government's contention that reclamation law is applicable because of the irrigation benefits provided by Pine Flat Dam to the water users in the service area is without merit.

11. Officials of the Bureau of Reclamation in California concluded in studies and recommendations, completed in 1947, that it was not feasible to attempt to apply the acreage limitation provisions of reclamation law to the Tulare Lake Basin. The United States did not contend in this proceeding, and never has contended, that reclamation law and acreage limitation were intended by Congress to apply to some parts of the Kings River service area and not to other parts. It contends, as does defendant, that Congress intended the same law to apply to the entire area.

12. Contrary to the Government's contention that the language of Section 8 of the Flood Control Act of 1944 (58 Stat. 891), supported its legislative history, requires the application of reclamation law to Pine Flat Dam, the Court finds that Congress intended that Section 8 of the Flood Control Act of 1944 (58 Stat. 891) make reclamation law and the acreage limitation prescribed by reclamation law applicable to Flood Control projects only where a new or

supplemental water supply would be developed by the project which would be owned and could be sold by the United States for irrigation purposes through canals and ditches constructed by the Bureau of Reclamation; and Congress did not intend to make reclamation law or the acreage limitation prescribed by reclamation law applicable to projects authorized and constructed under said Flood Control Act of 1944, consisting of dam and reservoir projects constructed by and operated under the direction of the Secretary of War, unless and until: (a) the Secretary of War has determined upon recommendation by the Secretary of the Interior that such a project might be utilized for irrigation purposes; (b) the Secretary of the Interior has made a report and finding that additional works in connection with such project are necessary for irrigation purposes; and (c) there has been specific authorization of such additional works by an authorization act of Congress. The Court finds further that no new or supplemental water supply has been or is to be developed by Pine Flat Dam which can be sold by the United States; that no water stored in Pine Flat Dam has been or is to be delivered for irrigation purposes through canals and ditches constructed by the Bureau of Reclamation; that the Secretary of the Interior has made no recommendation, as contemplated by Section 8 of the 1944 Act, regarding the utilization of Pine Flat Dam for irrigation purposes and no determination based upon any such recommendation has been made by the Secretary of War; that the Secretary of the Interior has not made any report and finding that additional works in connection with Pine Flat Dam are necessary for irrigation purposes; that there has been no authorization of any such additional works by any authorization act of Congress; and that said Section 8 of the Flood Control Act of 1944 does not make reclamation law applicable to the Pine Flat Dam project. The Court further

finds that the irrigation use of said project was prescribed by Congress in Section 10 of said Flood Control Act of 1944.

13. Althouth Section 10 of the 1944 Act directed the payment for conservation storage in Pine Flat Dam be arranged by the Secretary of War, the payment contracts between the United States and the Kings River water users were negotiated by the Bureau of Reclamation pursuant to a directive from the President of the United States. This directive, however, could not, and did not, change the law applicable to the project as provided by Congress. In 1967, in connection with certain legislation pertinent to the Kings River, the Senate Committee on Interior and Insular Affairs observed in Senate Report No. 837, Ninetieth Congress, First Session:

> "The Secretary of the Interior was not 'delivering water' and, in fact, did not even have a project. The Kings River people owned the water and the Corps of Engineers constructed and operated dam and reservoir. The Department of the Interior was merely the contracting agency for the United States . . ."

The evidence at the trial supports the foregoing statements of the Senate Interior and Insular Affairs Committee, and the Court so finds.

14. The following findings are concerned in particular with the second issue in the case: Whether, even assuming that reclamation law and the 160 acre limitation initially applied to the irrigation use of Pine Flat Dam and the lands served by defendant with "stored water," payment in full of defendant's capital obligation with respect to Pine Flat Dam, which occurred on December 23, 1963, extinguished the application of the acreage limitation with respect to the land served by defendant. In regard to this issue, it was defendant's contention that final payment in full of the re-

payment obligation of a contracting entity for the irrigation benefits of a project whether in lump sum at the beginning of a contract period or whether it might occur, relieved that entity from the excess land provisions of federal reclamation law. Plaintiff, however, contended that advance payment in full of the repayment obligation of a contracting entity for the irrigation benefits of a given project does not relieve that entity from the excess land provisions of federal reclamation law. The findings which follow this statement and support defendant's contention on this issue should be read in connection with the preceding findings.

15. Plaintiff contended that Section 3 of the Act of August 9, 1912 (37 Stat. 266, 43 U.S.C. Section 544) did not modify what it conceives to be the basic objective of the excess land provisions of federal reclamation law. Said Section 3 provides in part as follows:

> That no person shall . . . acquire, own, or hold irrigable land for which entry or water rights application shall have been made under the said reclamation act of June seventeenth nineteen hundred and two and acts supplementary thereto and amendatory thereof, before final payment in full of all installments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior, as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess; but any such excess land acquired at any time in good faith by descent, by will, or by foreclosure of any lien may be held for two years and no longer after its acquisition;

The Court finds and so rules that said Section 3 expressly limits the acreage limitation provisions in Section 5 of the

Reclamation Act of June 17, 1902 (32 Stat. 387) to the period before "final payment in full" of the pertinent contractual repayment obligations relating to an irrigation project. This provision was interpreted by Chief Counsel King, of the Bureau of Reclamation in his opinion of July 1, 1914 (43 L.D. 339), to "permit the furnishing of water for land on which payment in full has been made of building and betterment charges even when more than 160 acres of such land is owned by one person." This provision and interpretation were consistent with the 1902 Act, and were carried forward in subsequent acts such as Section 13 of the Reclamation Extension Act of August 13, 1914 (38 Stat. 690, 43 U.S.C. Section 443).

The King opinion was promptly accepted and promulgated by the Department of the Interior. It was subsequently incorporated into Interior regulations in 1920 (27 L.D. 418), where it remains to this date (43 C.F.R. Section 230.65).

16. The practice of extinguishing acreage limitation upon final payment by a contracting entity, whether in lump sum at the beginning of a contract period, or whenever it might occur (often referred to as the "pay-out principle"), was according to the extensive evidence presented to this Court, the uniform practice of the Bureau of Reclamation and the Department of the Interior for 50 years. On December 26, 1961, for the first time, that practice was held unlawful by an opinion of the then Solicitor of the Department of the Interior (68 I.D. 374). Thereafter, by contracts with the Kings River water users, the United States agreed to submit for binding judicial determination the issue of whether the laws of the United States require the application of acreage limitations in the circumstances presented by this case.

17. In the course of the hearings on the Kings River Project leading to enactment of the Flood Control Act of

1944, the Commissioner of Reclamation acknowledged to Congress that the jurisdiction of the Bureau of Reclamation over the distribution of irrigation water would terminate upon the completion of pay-out. During the period 1945 through early 1961, four Solicitors of the Department of the Interior held that full repayment by a contracting entity terminates the application of acreage limitation to that entity [Fowler Harper's Memorandum opinion of August 21, 1945; Associate Solicitor Cohen's opinion (M-35004), October 22, 1947; Solicitor Elmer Bennett's opinion (M-36457), July 10, 1957 and Memorandum of October 17, 1957; Solicitor Theodore Stevens' opinion (M-36611), January 3, 1961]. Two of the Solicitors' opinions (Bennett and Stevens) related specifically to the Pine Flat Dam project. In addition, statements by three successive Secretaries of the Interior also confirmed the pay-out principle to Congress and the Kings River water users [e.g., Secretary Chapman, November 2, 1950; Secretary McKay, March 2, 1954; Secretary Seaton, July 12, 1957, October 27, 1957]. The earliest of these, by Secretary Chapman in 1950, represented to Congress that the pay-out principle was incorporated into the 1944 Flood Control Act's authorization of the Pine Flat project by the provision in Section 10 for repayment for conservation storage benefits in "lump sum or annual installments".

18. In 1956 the Department of the Interior prepared and submitted to the Chairman of the Public Works and Resources Subcommittee of the Committee on Government Operations, House of Representatives of the Congress of the United States, a two-volume study entitled "Excess Land Provisions of the Federal Reclamation Laws and the Payment of Charges." This study related expressly to the Pine Flat Dam and the Kings River water users. It was addressed to the legality under reclamation law of a draft

contract with the Kings River water users which provided for release of acreage limitations upon final pay-out of the capital charges allocated to the water users. The study, transmitted to the congressional subcommittee by the Under Secretary of the Interior, traced the practice of the Bureau and Department with respect to the pay-out doctrine from 1902 to 1956. The study included numerous exhibits verifying the practice stated and the conclusions reached. The final paragraph of the Department's summary statement, extending from pages 1 to 56, both inclusive, of volume one of the study, concludes as follows at page 56:

> The proposal contained in the repayment contract arrangement negotiated with the Kings River Conservation District is simply that when and to the extent construction charges repayable under that contract are paid to the United States, the lands with respect to which full payment is made will no longer be subject to the excess land limitation of the federal reclamation laws. Development of this phase of the proposed contract constitutes the application of a principle which is consistent with a policy of long standing and which is compatible with the construction of Acts of Congress as they have been interpreted by administrative officials and legal staffs of the Department over a long period of years.

Volume two of the 1956 Study presented to Congress contains numerous letters and correspondence from the Department of the Interior pertaining to the determination and assurances that pay-out by Kings River contracting waters users terminates application of acreage limitations. Furthermore, the evidence of record contains numerous other documents of the same nature issued by the Department up to and including the year 1961.

19. The draft contract with the Kings River water users incorporated in the study provided for the extinguishment of acreage limitation upon complete pay-out by the contracting entity or by a landowner. In the latter situation, final payment by the landowner consisted of the capital charges applicable to his land. The contract between the United States and the defendant of December 23, 1963, involves final payment by the contracting entity, itself, which payment, as previously stated, was made, in full, on December 23, 1963. The above-quoted statement of the Department of the Interior in paragraph 18 covers conclusively the principle of pay-out and release of acreage limitation involved in the defendant's contract of December 23, 1963.

20. This study and the views expressed therein endorsing the pay-out principle were widely disseminated by the Department of the Interior when presented to Congress in 1956. Congress did not reject this interpretation of reclamation law, but, to the contrary, it enacted general reclamation legislation, the Small Reclamation Projects Act of 1956 (70 Stat. 1044, 43 U.S.C. § 4223), based upon and expanding the principle by providing that payment of the capital component, or of interest thereon, attributable to excess lands on a project completely displaces the application of acreage limitation to such lands. Congress had also recognized in the Russian River project authorization of the Flood Control Act of 1950 (64 Stat. 170) that lump sum payment for irrigation benefits obviated the application of acreage limitation to excess lands in a project coming within the provisions of Section 8 of the Flood Control Act of 1944.

21. The record contains an enormous amount of evidence, in addition to the 1956 Study, verifying the Department of the Interior's consistent practice on reclama-

tion projects of recognizing that acreage limitation terminates upon final payment of capital charges. A Bureau of Reclamation survey report on landownerships on federal reclamation projects and laws applicable thereto published in 1946 verifies that the pay-out principle was consistently recognized in the administration of reclamation projects constructed prior to the enactment of the Flood Control Act of 1944. The parties have stipulated as to the existence and as to the pertinent pay-out provisions contained in some 100 contracts on numerous reclamation projects, verifying this practice. Many of these contracts were specifically approved by Congress pursuant to Section 7(c) of the Reclamation Project Act of 1939 (53 Stat. 192, 43 U.S.C. § 485f). The plaintiff, however, contended that no instances were shown of actual advance lump sum pay-out, but the court finds that this attempted distinction is of no significance and that under the rationale for the practice, it is immaterial whether full payment is made at the outset or at a later time.

22. Moreover, the Court notes that the Government, in response to one of defendant's interrogatories, states that it knew of no instance where final payment of construction charges allocated to irrigation benefits had been made and acreage limitation had continued to be thereafter enforced. Similarly, the Court was advised of no instance wherein final payment, in lump sum or on an accelerated basis, had been refused by the United States. As to the latter, in any case, the Court has noted that Section 10 of the 1944 Act, applicable to Pine Flat Dam, expressly authorizes "lump sum" payment, and full payment has been made to the United States by the defendant, Tulare Lake Canal Company.

23. The 1959 report of the Committee on Interior and Insular Affairs of the House of Representatives, the committee of the House having cognizance over reclamation

matters, on the bill which authorized the so-called San Luis project in California, House Report No. 399, Eighty-Sixth Congress, First Session, referred to the pay-out rule as documented in the aforementioned 1956 Study presented to Congress pertaining to Kings River and Pine Flat Dam and as applied theretofore, in the following terms:

> "During the period when irrigation water contracts were entered with individuals rather than organized disticts, it is thus clear that the law forbade delivery of water to no more than one farm unit held by an individual only so long as the entire construction cost allocated to the excess unit had not been paid in full. That the law was so read and applied by the Interior Department as shown in detail in the Bureau of Reclamation's printed publication entitled "Landownership Survey on Federal Reclamation Projects" (1946) and the Interior Department's two-volume document prepared for the Subcommittee on Public Works and Resources of the House Committee on Government Operations entitled "Excess Land Provisions of the Federal Reclamation Laws and the Payment of Charges" (1956).
>
> "The same rule has been held to be applicable to irrigation district contracts . . .
>
> "The present Secretary of the Interior has, in effect, announced his concurrence in this view of the law. On July 12, 1957, he said . . .
>
> 'The Department continues to recognize and support the basic concept of reclamation law that full and final payment of the obligation of a district to the Federal Government ends the applicability of the acreage limitations—
>
> and added—
>
> 'So long as the present acreage limitations remain in the basic reclamation law, they should be com-

plied with, until the district has fully discharged its obligations to the Federal Government.'

". . . Whatever may be the merits or demerits of continuing to apply the prevailing construction of the 1912 and 1926 acts to irrigation districts in situations in which, although final payment is made only after a period of years during which they received the benefits of interest-free Federal money and, in many cases, assistance from power revenues, it remains true that (1) the administrative practice of doing so is now so well fortified by history that it can probably be successfully attacked by no one except Congress and (2) that there is no legislation now pending before Congress, nor has any ever been introduced, which would overrule the departmental interpretation of these acts or provide other standards to guide it."

The Court adopts the foregoing committee statement as a finding fully supported by the evidence in this proceeding.

24. As the evidence establishes, the Kings River water users relied upon numerous and repeated assurances made to them by the Bureau of Reclamation and the Department of the Interior that, even though acreage limitation initially applied to the irrigation use of water stored in Pine Flat Dam, such acreage limitation would no longer apply to any Kings River contracting entity after it made final payment of capital charges, such as was done by the defendant in this case. If pay-out has not the effect of extinguishing acreage limitation, the position of the Kings River water users and this defendant would be most seriously prejudiced. The Kings River water users, including the defendant herein, have expended millions of dollars and untold numbers of hours in reliance upon the Bureau's representations that pay-out would terminate acreage limitations under applicable law.

25. For example, beginning in early 1954 and continuing through 1963, the Kings River water users availed themselves of the storage facilities of Pine Flat Dam for irrigation purposes under annual interim contracts. Under such contracts, the water users, including defendant herein, paid amounts for water storage far exceeding the operation and maintenance costs allocated to irrigation use. The water users, including defendant herein, were allowed credits toward the $14,250,000 capital cost repayment obligation for the amounts paid under these interim contracts in excess of annual operation and maintenance costs allocated to irrigation use, but these credits were contingent upon their ultimate execution of permanent contracts. The credits amassed through 1963 amounted to $6.8 million, or almost one-half of the total repayment obligation for irrigation storage use of Pine Flat Dam. Therefore, the water users were in the position of having paid almost half of the capital cost obligation for the acquisition of permanent storage rights in Pine Flat Dam in reliance upon assurances that the use of those rights would not be subject to acreage limitations after the balance of their respective shares of the capital cost obligations had been fully repaid. Had the water users foregone the irrigation storage use of the Dam after the Department of the Interior disavowed the applicability of the pay-out principle, they would have forfeited these substantial payments already made toward permanent storage rights.

26. To permit the Government to reverse its position as to the effect of pay-out would mean that the Kings River water users paid out millions of dollars in reliance to their detriment upon a legal interpretation repeatedly reaffirmed to them by the Government and commended to them by long-standing interpretation and application of the law over the course of at least 50 years. The Court is not aware of

a clearer case of substantial reliance by citizens upon the Government's contemporaneous and long-standing administrative interpretation and application of federal law, which is fully supported by the statutes enacted by Congress.

27. All of the findings of fact set forth in the Court's Memorandum and Order of January 6, 1972, are incorporated herein to the extent not above included.

Conclusions of Law

1. Section 10 of the Flood Control Act of 1944 authorizes Pine Flat Dam to be constructed and operated by the Army Engineers under supervision of the Secretary of War [now Army] for flood control and other purposes, including irrigation storage use, and does not direct or authorize the application of federal reclamation law or the 160-acre limitation to the irrigation storage use of that facility.

2. It is infeasible and would produce bizarre and absurd consequences if an attempt were made to impose acreage limitation and family-farm settlements within the Tulare Lake Basin.

3. The Laws of the United States, and particularly Section 8 of the Flood Control Act of 1944, do not make federal reclamation law applicable to a dam and reservoir project authorized by said Flood Control Act and operated under the direction of the Secretary of War unless and until: (a) the Secretary of War has determined upon recommendation by the Secretary of the Interior that such a project might be utilized for irrigation purposes; (b) the Secretary of the Interior has made a report and finding that additional works in connection with said project are necessary for irrigation purposes; and (c) there has been specific authorization of such additional works by an authorization act of Congress. None of the foregoing conditions having been satisfied, Federal reclamation laws, including the acreage limitation

provisions thereof, have no application to the irrigation storage use of Pine Flat Dam.

4. Federal reclamation laws provide an example of the type of legislation, comprising numerous separate enactments over a period of many years, which must be read as a composite whole. A later enactment does not supersede an earlier enactment unless Congress has expressed its intent to this effect or unless there is a necessary conflict between the later and earlier enactments. Section 3 of the Act of August 9, 1912, and other provisions of statute law recognizing that acreage limitation terminates upon final pay-out of capital costs by a contracting entity are not in conflict with Section 46 of the Omnibus Adjustment Act of May 25, 1926, or any other reclamation law. Federal reclamation laws, even if applicable, do not apply acreage limitation after an entity contracting with the United States completes full and final payment of its contractual obligation for reimbursable capital costs allocable to irrigation benefits.

5. Administrative interpretation and application by the agency charged by Congress with the administration of a pertinent law, particularly, as here, where such administrative interpretation is contemporaneous with the enactment of the statute involved and the application of that interpretation is thereafter uniform and long-continued, are entitled to great weight by the federal judiciary. An administrative agency may not reverse itself and change such interpretation and application unless the statute plainly does not admit of the interpretation and application previously given it. These principles of law apply with peculiar force in a situation, such as the present one, where citizens have relied at vast expenditure of money and time upon repeated Government assurances of the correctness of its interpretation and administration of the acts of Congress involved, and where Con-

gress, both by acceptance and affirmative action, has repeatedly approved such interpretation and administration.

6. The laws of the United States, as of December 23, 1963, the date of Contract No. 14-06-200-691-A between defendant and the United States for irrigation storage rights in Pine Flat Dam, did not prohibit, and have not prohibited at any time thereafter, the delivery of stored water from Pine Flat Dam to the excess lands of a large landowner who has not executed a recordable contract under federal reclamation law.

7. Pursuant to Article 8(e) of Contract No. 14-06-200-691-A, all the provisions of Article 8 of said contract, purporting to impose a prohibition against defendant's delivery of stored water from Pine Flat Dam to excess lands of a large landowner who has not executed a recordable contact, are void *ab initio* and of no effect.

8. All of the conclusions of law set forth in the Court's Memorandum and Order of January 6, 1972, and in the foregoing findings of fact, are incorporated herein to the extent not above included.

9. Plaintiff is not entitled to the injunction prayed for in its complaint. Defendant and intervenors are entitled to judgment in their favor.

Dated: Mar. 15, 1972.

M. D. CROCKER
United States District Judge

Exhibit B.

Opinion.

United States Court of Appeals for the Ninth Circuit.

United States of America, Plaintiff-Respondent, v. Tulare Lake Canal Company, a corporation, Defendant-Petitioner, Tulare Lake Basin Water Storage District and Salyer Land Company, a corporation, Intervenors-Defendants. No. 72-2322.

United States of America, Plaintiff-Appellee, v. Tulare Lake Canal Co., a corp., Defendant, and Tulare Lake Basin Water Storage District, Intervenor-Defendant, and Salyer Land Co., a corp., Intervenor-Defendant-Appellant. No. 78-1378.

United States of America, Plaintiff-Appellee, v. Tulare Lake Canal Co., a corp., Defendant-Appellant, and Tulare Lake Basin Water Storage District, Intervenor-Defendant-Appellant, and Salyer Land Co., a corp., Intervenor-Defendant. No. 78-1422, D.C. No. CV 2483 ND.

Filed: May 17, 1982.

Appeal from the United States District Court for the Eastern District of California, Honorable M.D. Crocker, District Judge, Presiding. Argued and Submitted November 13, 1980.

Before: BROWNING, Chief Judge, DUNIWAY and WALLACE, Circuit Judges.

BROWNING, Chief Judge:

The basic question presented by this lengthy litigation is whether acreage limitations imposed by the federal reclamation laws apply to private lands receiving irrigation benefits from the Pine Flat Project. More specifically, the question is whether owners of more than 160 acres of land within the project area must execute recordable contracts to sell

their land in excess of 160 acres at a price excluding incremental value resulting from the existence of the project in order to receive water that would not have been available if the project did not exist. The relevant legal and factual questions are explored in detail in *United States v. Tulare Lake Canal Co.*, 535 F.2d 1093, 1094-96 (9th Cir. 1976) (*Tulare I*) (No. 72-2322).

The United States brought this action in 1963, seeking an injunction enforcing the acreage limitation. The defendants raised both statutory and constitutional defenses. The district court found for defendants on the statutory grounds and did not reach the constitutional questions. 340 F. Supp. 1185, 1188 (E.D. Cal. 1972). In *Tulare I*, we reversed the district court judgment and rejected defendants' statutory defenses. On remand, the district court granted the government's motion for summary judgment on the constitutional issues. Defendants appeal from that ruling in Nos. 78-1378 and 78-1422.

Defendant Tulare Lake Canal Company has also filed a "Petition for the Court to Recall its Mandate" in *Tulare I* based on the Supreme Court's subsequent decisions in *California v. United States*, 438 U.S. 645 (1978), and *Bryant v. Yellen*, 447 U.S. 352 (1980).

I. *The Statutory Issues: Petition to Recall the Mandate in No. 72-2322*

Tulare argues that it is appropriate to recall the mandate in *Tulare I* because the decision is "demonstrably wrong," *American Iron & Steel Institute v. Environmental Protection Agency*, 560 F.2d 589, 594 (3d Cir. 1977), in light of the decisions in *California* and *Bryant*. A change in controlling authority or a conviction that the court erred are ordinarily not alone sufficient grounds for recall of a mandate after final judgment. 16 Wright, Miller, Cooper & Gressman,

Federal Practice and Procedure: Jurisdiction § 3938 at 284-85. However, since final judgment has not been entered in this case, we consider the effect of *California* and *Bryant* on *Tulare I* under the more flexible "law of the case" doctrine. *Kimball v. Callahan*, 590 F.2d 768, 771-72 (9th Cir. 1979). We conclude that neither *California* nor *Bryant* affects the soundness of *Tulare I*.

A. *California v. United States*

As noted at the outset, the question presented in *Tulare I* was whether the acreage limitation of federal reclamation law applies to the Pine Flat Project. As the issue was presented in *Tulare I*, the answer turned upon the meaning of the statutes authorizing the project and imposing the acreage limitation. The Pine Flat Project was authorized by the Flood Control Act of 1944, 58 Stat. 887, 901. Section 8 of the 1944 Act provides that dams such as Pine Flat shall be operated "under the provisions of the federal reclamation laws." 58 Stat. 887, 891; 43 U.S.C. § 390. Among the provisions o the federal reclamation laws is Section 46 of the Omnibus Adjustment Act of 1926, 44 Stat. 636, 649-50, 43 U.S.C. § 423e, derived from Section 5 of the Reclamation Act of 1902, 32 Stat. 389, 43 U.S.C. § 431. Section 46 of the 1926 Act provides that lands in excess of 160 acres held by one owner shall not receive water made available by the construction of a project unless the owner executes a contract agreeing to sell the excess land at prices reflecting the value of the excess land without the benefits made available by the project. We held in *Tulare I* that Congress intended by Section 8 of the Flood Control Act of 1944 to make Section 46 of the Omnibus Adjustment Act of 1926 applicable to the Pine Flat Project.

The question presented in *California* was whether the state may impose conditions upon the appropriation and

distribution of water in connection with the New Melones Dam, a federal reclamation project in the Central Valley of California. The answer turned on the meaning of Section 8 of the Reclamation Act of 1902, 32 Stat. 390, 43 U.S.C. § 383, which states that the 1902 Act was not intended to interfere with the laws of any state relating to the appropriation or distribution of water, and that the Secretary of Interior is to proceed in conformity with such laws. The Supreme Court held that, in view of Section 8 of the 1902 Act, the state may impose any condition on the appropriation and distribution of water in a federal reclamation project not inconsistent with Congressional directives respecting the project.

Although Section 8 of the 1902 Act is applicable generally to federal reclamation projects, including the Pine Flat Project, and the holding in *California* is therefore applicable to Pine Flat, the issue resolved in *California* obviously was not the same as the issue resolved in *Tulare I*. Tulare Lake Canal Company argues that *California* nonetheless affects *Tulare I* for two reasons.

The first is that *Tulare I* relied upon *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275 (1958), and *California* expressly rejected a dictum from the *Ivanhoe* opinion. The language in *Ivanhoe* that was disapproved in *California* suggests that a state may not impose conditions upon the distribution of water through a federal reclamation project even though the conditions "are not inconsistent with congressional provisions authorizing the project in question." 438 U.S. at 674. This language in *Ivanhoe* was disapproved in *California* because *California* held that a state *could* impose upon the distribution of water through a federal reclamation project any condition that was not inconsistent with Congressional directives for the project.

Tulare I did not rely upon the dictum disapproved in *Ivanhoe*. *Tulare I* relied instead upon the holding in *Ivanhoe*, a holding expressly reaffirmed in *California*. Section 5 of the Reclamation Act of 1902 contains an acreage limitation provision — the forerunner of the acreage limitation in Section 46 of the Omnibus Adjustment Act of 1926, involved in *Tulare I*. The holding in *Ivanhoe* was that despite the general command of Section 8 of the Reclamation Act of 1902 that the Secretary of Interior comply with state law, the acreage limitation in Section 5 of the 1902 Act preempted the law of California prohibiting such an acreage limitation. 357 U.S. at 291-93. In *California* the Supreme Court expressly reaffirmed this holding. 438 U.S. at 668 n.21, 672 & n.25. We relied upon this holding, or upon other aspects of *Ivanhoe* unrelated to the disapproved dictum, each time we cited *Ivanhoe* in *Tulare I*. *See* 535 F.2d at 1099, 1112, 1113 n.74, 1119, 1120, 1121 n.103, and 1137 n.176.

Second, Tulare Lake Canal Company argues that even if the holding of *California* is not inconsistent with *Tulare I*, the rationale is. The Company argues that the general tenor of *California* requires greater deference to state law in the management of federal reclamation prospects, and since California law prohibits acreage limitations in the distribution of irrigation benefits, the decision in *Tulare I* that the acreage limitation in Section 46 of the 1926 Act applies to the Pine Flat Project despite contrary state law is somehow inconsistent with *California*. But, as noted, *Ivanhoe* expressly held that the acreage limitations in section 5 of the 1902 Act pre-empt contrary California law, and *California* expressly reaffirmed this holding. The company does not state, and we are unable to discover, any reason why the acreage limitation in Section 46 of the 1926 Act should have a different effect.

Tulare Lake Canal Company reads *California* as requiring that state law be followed unless it conflicts with "a 'clear,' 'specific,' or 'explicit' Congressional directive," and argues that the length of the discussion of legislative history in *Tulare I* "alone demonstrates that Congressional intent to that effect certainly was not 'clear,' 'specific,' or 'explicit.' " There can be no doubt that the Congressional directive to impose the acreage limitation is sufficiently clear, specific, and explicit to pre-empt state law. That is the holding of *Ivanhoe* that was reaffirmed in *California*. Our lengthy discussion in *Tulare I* was directed to another question: whether Congress in the Flood Control Act of 1944 intended to apply this clear, specific, and explicit federal directive to the Pine Flat Project. *California* has no relevance to this question at all. And even on this question we found the answer clear. After a thorough examination we concluded that "[t]he legislative history leaves no doubt that the 160 acre limitation was intended to apply in the Kings River service area." 535 F.2d at 1098.

In sum, although *California* does require that the United States follow state water law absent a pre-empting federal statute, the same case shows that section 46 of the 1926 Act is precisely such a statute. *California* strengthened rather than weakened the conclusion we reached in *Tulare I*.

B. *Bryant v. Yellen*

The question presented in *Bryant* was whether the Imperial Valley Irrigation District, which received Colorado River water from the project authorized by the Boulder Canyon Project Act, 45 Stat. 1057, 43 U.S.C. §§ 617-617u, was subject to the acreage limitation in Section 46 of the Omnibus Adjustment Act of 1926. Since Section 14 of the Boulder Canyon Project Act provided that the reclamation laws would apply "except as otherwise herein provided,"

the Court concluded that Section 46 of the 1926 Act applied to the Imperial Valley district unless its applicability was foreclosed by some other provision of the Boulder Canyon Act. 447 U.S. at 368-69. The Court found such a bar in the provision of Section 6 of the Boulder Canyon Act that Boulder Canyon Project works were to be used for the "satisfaction of present perfected rights." The court concluded, in light of the section's express language, legislative history, and contemporary construction by government officials, that rights to water from the Colorado that had been acquired in accordance with state laws and exercised by actual diversion and application of a specific quantity of water to a defined area of land before the effective date of the Act were not subject to the 160-acre limitation. 447 U.S. at 368-78.

The provision of Section 6 of the Boulder Canyon Project Act which the Supreme Court read as exempting "present perfected rights" from acreage limitation is central to the decision in *Bryant*. There is no equivalent exception in the Flood Control Act of 1944, applicable to the Pine Flat Project.

Tulare relies on the following language of Section 8 of the 1944 Act:

> Dams and reservoirs operated under the direction of the Secretary of War may be utilized hereafter for irrigation purposes only in conformity with the provisions of this Section, but *the foregoing requirement shall not prejudice lawful uses now existing*.

(emphasis supplied). As we held in *Turner v. Kings River Conservation District*, 360 F.2d 184, 193-194 (9th Cir. 1966), however, the italicized language refers to uses to which projects operated by the Secretary of War were being put at the effective date of the 1944 Act. It refers neither

to private water rights nor to projects, like Pine Flat, that were not in existence when the 1944 Act was passed.

Furthermore, unlike the situation in *Bryant*, neither legislative history nor contemporaneous administrative interpretation of the statute authorizing the Pine Flat Project (the Flood Control Act of 1944) supports an exemption of the project from the 160-acre limitation. To the contrary, as the opinion in *Tulare I* demonstrates at length, both the legislative history and administrative construction of the Flood Control Act of 1944 clearly reflect a Congressional intent that the acreage limitations apply to the Pine Flat Project.

Equally wide of the mark is Tulare Lake Canal Company's reliance upon the following provision of Section 8 of the 1902 Act:

> Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State . . . relating to . . . water in irrigation, or any vested right thereunder . . . and nothing herein shall in any way affect any right of . . . any landowner, appropriator, or user of water in, to or from an interstate stream . . . .

As we have pointed out, the Supreme Court in *California* explicitly reaffirmed its holding in *Ivanhoe* that the acreage limitation in Section 5 of the 1902 Act preempted contrary state law despite the provisions in Section 8. As we have also noted, the Company has suggested no reason why Section 8 of the 1902 Act should have a different effect upon the acreage limitation in Section 46 of the 1944 Act, involved in *Tulare I*, than it has upon the acreage limitation in section 5 of the 1902 Act.

Thus the acreage limitation imposed by Section 5 of the 1902 Act and subsequent statutes applies despite Section 8 of that Act unless there is another applicable statutory provision reflecting a congressional intention that it should

not apply to the particular project. As we have explained, there is no such provision applicable to the Pine Flat Dam. Even if there were, it would not change the result in *Tulare I*. Under our decision water rights that existed when the Pine Flat Project was initiated are not affected by the 160-acre limitation. Owners of excess lands may continue to receive all the water to which thy were entitled prior to the construction of the project without executing contracts for the sale of the excess lands. *See* 535 F.2d at 1095 & n.3, 1143-44.

II. *The Constitutional Issues: Appeals in Nos. 78-1378 and 78-1422*

The Supreme Court reviewed and rejected a wide range of constitutional challenges to the imposition of acreage limitations in federal reclamation projects in *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275, 294-300 (1958). The constitutional arguments raised by appellants fare no better.

Appellants argue that because the acreage limitation imposed by federal reclamation law do not apply east of the 100° meridian, farmers west of that meridian are denied equal protection of the laws. Differing conditions in different geographic areas may provide a reasonable basis for different legislative treatment. "[T]erritorial uniformity is not a constitutional prerequisite." *McGowan v. Maryland*, 366 U.S. 420, 427 (1961). *See also Toyota v. Hawaii*, 226 U.S. 184, 191 (1912). As the Court noted in *California v. United States, supra*:

> the final expansion of our Nation in the 19th century into the arid lands beyond the hundredth meridian of longitude, which had been shown on early maps as the 'Great American Desert,' brought the participants in that expansion face to face with the necessity for ir-

> rigation in any way that no previous territorial expansion had.

438 U.S. at 648. The Reclamation Act of 1902 and the statutes that followed provided the means for funding the massive projects needed to complete the reclamation of the vast arid areas of the west. *Id.* The reclamation statutes are a rational legislative response to climatic differences between the western region and the remainder of the nation. Provision for acreage limitation are a reasonable means of furthering the public purposes underlying these statutes. *Ivanhoe*, 357 U.S. at 297; *Tulare I*, 535 F.2d at 1119-20.

Appellants argue that "it is unconstitutional for the United States to seek the breakup of large landholdings." Section 46 of the 1926 Act establishes restrictions on the use of water available only because of the construction of the facilities financed by the government. Congress had the power to authorize such projects and to impose reasonable conditions, such as the acreage limitation, "relevant to the federal interest in the project and to the over-all objectives thereof." *Ivanhoe*, 357 U.S. at 295.

Appellants assert that *Ivanhoe* involved government-owned water and a substantial government subsidy, and that the Pine Flat Project involved neither. As pointed out earlier, the acreage limitation applies only to the receipt of water that became available because of the federally financed project. An owner who declines to sell land in excess of 160 acres will continue to receive, for use on all of his lands, all of the water to which he was entitled before the project was built. *Tulare I*, 535 F.2d. at 1095 & n.3, 1143-44. Contrary to appellants' position, the Pine Flat Project did involve a federal subsidy to provide this and other benefits justifying the imposition of reasonable conditions upon receipt of the benefits. *Tulare I*, 535 F.2d at 1113, 1120-21 & nn.101-06, 1144.

Appellants argue that water users had a vested right to be relieved of acreage limitations by paying an allocable share of project construction costs, and that they were deprived of that right without due process of law. But, as we held in *Tulare I*, 535 F.2d at 1118-43, no such right exists.

Finally, appellants argue the district court erroneously refused to allow discovery that would have shown a denial of equal protection in exempting other projects from the acreage limitation but not Pine Flat. Appellants had ample opportunity for discovery during the eight years this case was pending in the trial court prior to the first appeal.

The petition to recall the mandate in 72-2322 is DENIED. The judgment of the district court appealed in 78-1378 and 78-1422 is AFFIRMED.

RE: *United States v. Tulare Lake Canal Co. — Nos. 72-2322, 78-1378, 78-1422*

WALLACE, Circuit Judge, concurring in the judgment:

I join in Part II of the majority's opinion addressing the constitutional issues adjudicated by the district court on remand. I agree with the majority's conclusion in Part I that *California v. United States*, 438 U.S. 645 (1978), and *Bryant v. Yellen*, 447 U.S. 352 (1980), do not affect our holding in *Tulare I*. I object, however, to the manner in which the majority has treated Tulare Lake Canal Company's argument concerning section 8 of the 1902 Act, and write separately to emphasize that our decision should not be construed as permitting the 160-acre limitation to apply to the receipt of waters to which private landowners have riparian or appropriative rights previously vested under state law.

Along with the majority, I do not believe that *California* or *Bryant* undercut the Supreme Court's holding in *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275 (1958) (*Ivanhoe*). I agree that the Flood Control Act of 1944 contains no express provision exempting "present perfected rights" comparable to that of the project statute involved in *Bryant*. I also join the majority's holding in Part I(B): Section 8 of the 1902 Act does not affect our decision because "[o]wners of excess lands may continue to receive all the water to which they were entitled prior to construction of the Pine Flat Project without executing contracts for the sale of excess lands." *Ante* at ___ . Tulare Lake Canal Company admits that the contract in this case expressly applies only to water "stored by means of the Pine Flat Dam and Reservoir and thereafter . . . relesed at times when it would not have been available in the absence of such storage and release . . . ." It is clear that the water subject to the acreage limitation simply would not have been available to the land-

owners if the project did not exist. Therefore, applying the acreage limitation to water covered by the contract does not interfere with the vested water rights of any of the parties. The landowners will continue to receive all the water to which they have pre-existing riparian or appropriative rights vested under California law free of the 160-acre limitation.

That disposes of the issue and it is unnecessary to venture beyond. But the majority opinion could be read to imply that *Ivanhoe* permits the acreage limitation to apply to the receipt of water stored by means of a federal reclamation or flood control project whether or not riparian or appropriative rights to that water had previously been vested pursuant to state law. If that is what the majority means, I do not join the dictum. The definition of "project water" in the contract involved here, quoted previously, excludes vested state water rights from the 160-acre limitation. That is sufficient to establish that our holding does not "interfere with the laws of any State . . . relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder" or "affect any right of any . . . landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof" within the meaning of section 8 of the 1902 Act.

If forced to resolve this issue, I doubt I could agree with the extremely broad construction of *Ivanhoe* suggested by the majority. In *Ivanhoe*, the Court refrained from "passing generally on the coverage of § 8 in the delicate area of federal-state relations in the irrigation field," 357 U.S. at 292, and emphasized twice that if the United States finds it necessary to acquire water rights to operate a reclamation project, or if enforcement of the acreage limitation interferes with any compensable water rights, the government must

pay just compensation for the vested rights so taken.[1] *Id.* at 291, 297. *See also Dugan v. Rank*, 372 U.S. 609, 625-26 (1963). The contracts involved in *Ivanhoe*, like those before us here, "applie[d] only to 'project water' and previously existing water supplies [were] unaffected thereby." 357 U.S. at 285. Thus, in *Bryant* the Court wrote that *Ivanhoe* did not involve "perfected rights to water that the project there involved would furnish. . . ." 447 U.S. at 372. In other words, it appears that *Ivanhoe* involved only reclamation water to which no riparian or appropriative rights had vested under California law.[2] As the Court later explained in *California*, its holding in *Ivanhoe* was simply that the acreage limitation preempts any contrary state law, and thus section 8 of the 1902 Act did not require the United States to comply with "California law [which] forbade the

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[1]In an earlier case involving the Pine Flat Project, *Turner v. Kings River Cons. Dist.*, 360 F.2d 184 (9th Cir. 1966), we held that the Flood Control Act of 1944 incorporates those provisions of the reclamation laws which permit the United States to condemn and pay just compensation for vested water rights taken in connection with the construction or operation of the dam. *See United States v. Tulare Lake Canal Co.*, 535 F.2d 1093, 1096 (9th Cir. 1976).

[2]As the California Supreme Court pointed out in its *Ivanhoe* opinion, the United States had acquired by assignment all "riparian, appropriative and prescriptive rights" to the "domestic" waters necessary to operate the Central Valley Project. *Ivanhoe Irrigation Dist. v. All Parties*, 47 Cal. 2d 597, 618-19 (1957). *See Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 285 (1958) (describing purchases and acquisitions of water rights by United States), *rev'g*, 47 Cal. 2d 597 (1957). The California court held that "[t]he water users of the state whose rights have *not* become vested . . . have an inchoate right to [an adequate supply of water] subject to like enforcement and equal protection of the law," *Ivanhoe Irrigation Dist. v. All Parties, supra*, 47 Cal. 2d at 626 (emphasis added), as the beneficiary of a trust relationship into which the United States had stepped by executing the contracts. This is perfectly consistent with the conclusion that whatever water rights were involved in *Ivanhoe* had not been vested under state law. *See also id.* at 627 (conclusion with respect to title to "unappropriated domestic waters" in the state); *cf. Bryant v. Yellen*, 447 U.S. 352, 371 n.23 (1980) (describing approach of California courts to *Ivanhoe* litigation).

160-acre limitation on irrigation water deliveries expressly written into § 5 of the Reclamation Act of 1902." 438 U.S. at 671. Citing section 8, however, the Court in *California* emphasized that the 1902 Act "clearly provided that state water law would control in the appropriation and later distribution of the [reclamation] water," *id.* at 664, and that "[t]he legislative history . . . makes it abundantly clear that Congress intended to defer to the substance, as well as the form, of state water law." *Id.* at 675.

None of this is particularly surprising. Conversely, it would be unusual if the Supreme Court in *Ivanhoe* had in fact allowed the acreage limitation to apply to water beneficially "owned" by private landowners without ever expressly addressing whether such application is an unconstitutional taking. *See Ivanhoe, supra*, 357 U.S. at 295-97 (acreage limitation did not "deprive appellees of any rights to property or water"). In one of its earliest cases involving the federal reclamation laws, the Court recognized that "Congress proceeded on the basis of full recognition of water rights having valid existence under state law," *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 734 (1950), and that the Court had never held "anything like" the proposition that "the Government could destroy the flow of a navigable stream and carry away its waters for sale to private interests without compensation to those deprived of them." *Id.* at 737. "Congress has recognized the property status of water rights vested under California law." *Id.* at 736.

Because the contracts involved here also recognize the property status of whatever riparian and appropriative water rights were previously vested in the landowners under California law, I concur in the judgment. But I must reject the majority's sweeping and unnecessary dicta to the extent they suggest that *Ivanhoe* would allow elimination of those rights without compensation.

Exhibit B.

Judgment.

This action having been tried before the Court, Honorable Myron D. Crocker, District Judge, presiding, a decision having been rendered by the Memorandum and Order entered herein on January 6, 1972, and findings of fact and conclusions of law having been entered by the Court;

IT IS ORDERED, ADJUDGED AND DECREED:

1. The laws of the United States and particularly Section 8 of the Flood Control Act of 1944 do not make federal reclamation law applicable to a dam and reservoir project authorized and constructed under said Flood Control Act and operated under the direction of the Secretary of War unless and until: (a) the Secretary of War has determined upon recommendation by the Secretary of the Interior that such a project might be utilized for irrigation purposes; (b) the Secretary of the Interior has made a report and finding that additional works in connection with said project are necessary for irrigation purposes; and (c) there has been specific authorization of such additional works by an authorization act of Congress.

2. Pine Flat Dam and Reservoir was constructed and is operated as a flood control project with incidental use for irrigation purposes under the authorization of Congress contained in Section 10 of the Flood Control Act of 1944. Because no subsequent determination was ever made by the Secretary of War upon recommendation of the Secretary of the Interior that the project could be utilized for irrigation, no finding and report by the Secretary of the Interior was ever made that the construction of additional works was necessary for irrigation purposes, no subsequent authorization act was ever passed by Congress for the construction

of any such additional works for irrigation, no canals and ditches through which water is delivered for irrigation purposes have ever been built by the Bureau of Reclamation and no supplemental water has been developed which is owned and can be sold by the United States, Section 8 of the Flood Control Act of 1944 does not make federal reclamation law, or the acreage limitation provisions thereof, applicable to the use of Pine Flat Dam and Reservoir for irrigation purposes.

3. Under the laws of the United States applicable to Pine Flat Dam and Reservoir and its use and operation for irrigation storage, neither defendant, nor intervenor defendant Tulare Lake Basin Water Storage District, is subject to any limitation or requirement of federal reclamation law that they refrain from delivering "stored water," as defined in their respective contracts with the United States, to lands in excess of 160 acres in single ownership unless and until the owner thereof executes a so-called recordable contract with the United States to sell such excess lands.

4. Defendant and intervenor defendant Tulare Lake Basin Water Storage District are not bound by the requirements of federal reclamation law in their delivery of water stored in Pine Flat Dam and Reservoir.

5. Federal reclamation law has no application to lands within the Kings River Service Area by reason of their receiving water from storage in Pine Flat Dam and Reservoir; and, therefore, no condition or limitation of said federal reclamation law can be imposed upon intervenor defendant Salyer Land Company as a requirement for its receiving water from storage in Pine Flat Dam and Reservoir.

6. Federal reclamation laws, even if applicable, do not apply acreage limitation after an entity contracting with the United States completes full and final payment of its con-

tractual obligation for reimbursable capital costs applicable to irrigation benefits.

7. Even if federal reclamation law, and the acreage limitation provisions thereof, were applicable to the receipt of water from storage in Pine Flat Dam and Reservoir, defendant was relieved of any such restriction regarding the delivery of "stored water," as defined in its contract with the United States, to lands in excess of 160 acres in single ownership by its full payment of its repayment obligation under said contract on December 23, 1963.

8. As of December 23, 1963, and at all times thereafter, the laws of the United States did not and do not prohibit the delivery of stored water from Pine Flat Dam to excess lands of a large landowner unless said owner executes a recordable contract under federal reclamation law. The provisions of Article 8 of contract number 14-06-200-691-A, between defendant and the United States, are void *ab initio* and of no effect.

9. The prayer of the United States for a permanent injunction against defendant is denied, and judgment is entered in favor of defendant and intervenor defendants that the United States take nothing by reason of its claim herein.

Dated: Mar. 15, 1972.

M. D. CROCKER
Myron D. Crocker
United States District Judge